

United States Senate  
WASHINGTON, DC 20510

October 18, 1999

The Honorable Aida Alvarez  
Administrator, Small Business Administration  
409 Third Street SW  
Washington, DC 20416

Dear Administrator Alvarez:

We appreciate the steps you have taken to date to make the new Historically Underutilized Business Zone (HUBZone) program a success. Providing Federal contract dollars to distressed urban centers and rural areas will undoubtedly make a genuine difference in jump-starting those economies, encouraging job creation and economic growth.

Two issues remain unresolved on how to fulfill the Congress' intent regarding Native American communities. One involves the issue of Native-owned enterprises qualified to take part in the HUBZone law; although your agency has found authority to approve enterprises owned directly by Tribes with corporate charters under the Indian Reorganization Act, otherwise-qualified enterprises owned by economic development corporations and similar Native-owned entities remain outside the scope of the current definitions. The other issue involves the Indian lands--particularly Alaska Native and Oklahoma Indian lands--under the statute.

Current law does not indicate which land areas of Alaska are eligible as HUBZones; the language referring to "Indian reservations" is not relevant to the unique situation of Alaska Natives, since the Alaska Native Claims Settlement Act (ANCSA) rejected the reservation approach as part of the land settlement. As a result, only the Annette Island Reserve, grandfathered into ANCSA, qualifies as a HUBZone under the current law.

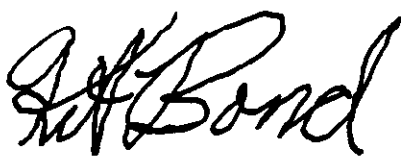
We are confident that most of these issues can and will be remedied by legislation, and we are committed to designing appropriate legislation that is consistent with the intent of the HUBZone Act, ANCSA, and federal Indian law. In the meantime, however, SBA's rules should be modified to reflect the current language of both the HUBZone Act and ANCSA. SBA attempted to invoke a section of ANCSA, defining the ownership and control of Alaska Native Corporations under the Act, to make small businesses with such corporate owners eligible. We are concerned that SBA's current language does not achieve this result. We do believe, though, that the language can be corrected to accord with existing law, and we propose the attached language to that end.

The Honorable Aida Alvarez  
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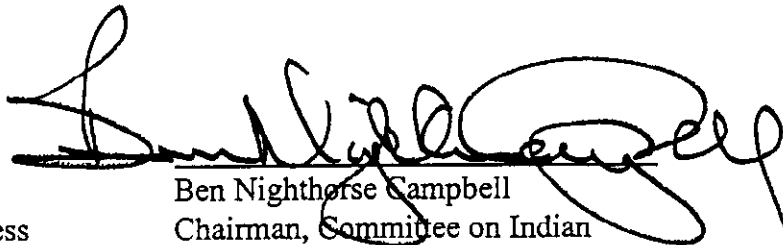
The proposal here does not quite make small businesses owned by the Alaska Native Corporations eligible, but it comes as close as current law will allow. Additional appropriate provisions on this issue will need to be included in legislation.

We believe these changes will make SBA's HUBZone regulations conform to the existing provisions of both ANCSA and the HUBZone Act. These changes will also facilitate participation by small businesses located in these areas that were intended to be included as HUBZones. We look forward to working with you to design legislation to fix the remaining HUBZone implementation issues. Thank you in advance for your assistance.

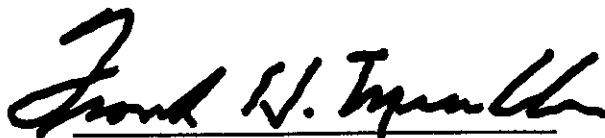
Sincerely,



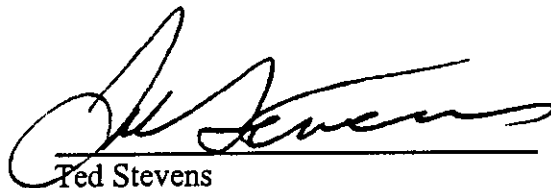
Christopher S. Bond  
Chairman, Committee on Small Business



Ben Nighthorse Campbell  
Chairman, Committee on Indian  
Affairs



Frank Murkowski  
Chairman, Committee on Energy  
and Natural Resources  
United States Senator, Alaska



Ted Stevens  
United States Senator, Alaska

## Current HUBZone Regulations

### **§126.103 What definitions are important in the HUBZone program?**

\* \* \*

*Citizen* means a person born or naturalized in the United States. SBA does not consider holders of permanent visas and resident aliens to be citizens.

\* \* \*

*HUBZone small business concern (HUBZone SBC)* means a concern that is small as defined by § 126.203, is exclusively owned and controlled by persons who are United States citizens, and has its principal office located in a HUBZone.

\* \* \*

*Indian reservation* has the meaning used by the Bureau of Indian Affairs in 25 CFR 151.2(f). This definition refers generally to land over which a “tribe” has jurisdiction, and “tribe” includes Alaska Native entities under 25 CFR 81.1(w).

\* \* \*

*Person* means a natural person. Pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e), Alaska Native Corporations and any direct or indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation are deemed to be owned and controlled by Natives, and are thus persons.

\* \* \*

### Problems with the Current Rules

These rules attempt to ensure the eligibility of HUBZone small businesses owned by Alaska Native Corporations or by subsidiaries of such corporations. The rules declare Alaska Native Corporations to be “persons,” a qualification implicit in the HUBZone law’s requirement that HUBZone small business concerns be 100% owned by U.S. citizens.

However, Alaska Native Corporations would not meet the citizenship condition merely as a result of this construction. The definition of “citizen” places a further limitation, to persons born or naturalized in the U.S. Since Alaska Native Corporations are not born or naturalized in the usual usage of those words, Alaska Native Corporations still fail to meet the citizenship requirement.

Further, section 29(e) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. § 1626(e)) does not really support a declaration that Alaska Native Corporations are “persons” as such. The section designates certain Alaska Native Corporations as being owned and controlled by Alaska Natives. Since Alaska Natives are persons, the Corporations would therefore be owned and controlled by persons. The HUBZone rules’ designation of the Corporations themselves as persons is a significant step beyond the language of this section.

The rules also attempt to designate Alaska equivalents to the Indian reservations in the Lower 48 by referring to the definition of “tribe” in 25 CFR § 81.1(w), which refers to certain Alaska Native entities (not necessarily Alaska Native Corporations). However, the definition of “tribe” at § 81.1(w) does not apply to the definition of “Indian reservation” at § 151.2(f). Part 151 has its own definition of “tribe” at § 151.2(b); the definition at § 81.1(w) applies only to Part 81. The definition of “tribe” at § 151.2(b) does not include Alaska Native Corporations.

It should also be noted that the definition of “Indian reservation” cannot be expanded in this manner to include lands selected by Alaska Native Corporations under the Alaska Native Claims Settlement Act. Alaska Native Corporations do not exercise governmental jurisdiction over these lands, nor can they deed the land to a Native village government and confer governmental jurisdiction over those lands to the village government. *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

Proposed Changes to the HUBZone Regulations  
~~Matter proposed to be struck. [Matter proposed to be inserted.]~~

**§126.103 What definitions are important in the HUBZone program?**

\* \* \*

*Citizen* means a person born or naturalized in the United States. SBA does not consider holders of permanent visas and resident aliens to be citizens.

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*HUBZone small business concern (HUBZone SBC)* means a concern that is small as defined by § 126.203, is exclusively owned and controlled by persons who are United States citizens, and has its principal office located in a HUBZone.

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*Indian reservation* has the meaning used by the Bureau of Indian Affairs in 25 CFR 151.2(f). ~~This definition refers generally to land over which a “tribe” has jurisdiction, and “tribe” includes Alaska Native entities under 25 CFR 81.1(w).~~

\* \* \*

**[*Owned and controlled by persons*, generally, refers to ownership and control by natural persons. However, pursuant to section 29(e) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1626(e)), Alaska Native Corporations meeting the criteria in paragraph (1) and any direct or indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation meeting the criteria in paragraph (2) are deemed to be owned and controlled by Natives, and are thus owned and controlled by persons.]**

~~*Person* means a natural person. Pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e), Alaska Native Corporations and any direct or indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation are deemed to be owned and controlled by Natives, and are thus persons.~~

\* \* \*

### Explanation and Justification of Proposed Changes

These changes add a new definition of “owned and controlled by persons” to recognize, for HUBZone purposes, the provision of the Alaska Native Claims Settlement Act declaring certain Alaska Native Corporations to be owned and controlled by Alaska Natives. Since Alaska Natives are natural persons, these Corporations would also be owned and controlled by persons. Paragraph (2) of 43 USC § 1626(e) extends similar treatment to certain Corporations owned by other Alaska Native Corporations. Alaska Native Corporations meeting the description in 43 U.S.C § 1626(e) would be deemed to be owned and controlled by persons.

This change would bring SBA’s regulations into compliance with existing law. However, this does not address whether the Alaska Native Corporations are owned and controlled by citizens, nor does it address whether these corporations are exclusively owned and controlled by citizens, as the HUBZone Act and its regulations require. The ANCSA settlement may imply that such Corporations are owned and controlled by citizens, but in the absence of clear legislative language, this is at least debatable. Thus, the issue of citizenship respecting Alaska Native Corporations has been reserved for legislation.